UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc. **Docket No. ER01-1482-000**

NOTICE OF INTERVENTION OF MAINE PUBLIC UTILITIES COMMISSION, MOTION TO INTERVENE OF VERMONT DEPARTMENT OF PUBLIC SERVICE AND JOINT COMMENTS IN SUPPORT OF ISO NEW ENGLAND'S FILING

In accordance with Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission[1] ("Commission"), the Maine Public Utilities Commission ("MPUC") files its notice of its intervention and the Vermont Department of Public Service ("VDPS") files its motion to intervene in the above-referenced proceeding. In addition, MPUC and VDPS hereby submit joint comments in support of the filing made by ISO New England Inc. in this proceeding.

I.

The MPUC designates the following persons for service and communications with respect to this matter and requests that their names be placed on the official service list for this case; and that all communications be addressed to them separately:

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[1] 18 C.F.R. § 385.214 (2000).

For VDPS, communications and correspondence with regard to this proceeding should be addressed to:

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II.

Under Maine law, the MPUC is the state body designated by statute with jurisdiction over rates and service of electric utilities in Maine. 35-A M.R.S.A. § 101 *et seq.*

VDPS is charged, through the Director for Public Advocacy, to represent the interests of the public in utility matters before the Vermont Public Service Board ("VPSB") as well as before the Federal Energy Regulatory Commission. *See* Vt. Stat. Ann. tit. 30, § 2(b) (1997). As the State of Vermont's public advocate, VDPS has an affirmative duty to protect the interests of Vermont consumers of electricity in securing reliable, safe, reasonably priced power. VDPS has participated in Commission proceedings on behalf of Vermont ratepayers in numerous dockets. In addition to its advocacy role, VDPS pursues its consumer protection objectives through its engagement in the acquisition and sale of power at wholesale, activities which supplement the regulatory protections afforded consumers by stimulating competition in the Vermont electric market. VDPS also has the authority, and in prior periods has sold at retail directly to rural and residential consumers of electricity, under rates filed with and regulated by the Vermont Public Service Board. *See* Vt. Stat. Ann. tit. 30, § 212a (1997). Those retail sales have at times accounted for a significant portion of the energy requirements of the residential consumers in the state. VDPS also sells power to other utilities at wholesale.

III.
BACKGROUND

On March 9, 2001, ISO-New England (the "ISO") filed amendments to (1) extend until December 31, 2001 the current Interim Market Rule providing for a $1000 per MWh bid cap and (2) to provide a better definition of the circumstances when markets may not be workably competitive. The current bid cap expires on March 31, 2001. The ISO requests an effective date of April 1, 2001 for the Amended Interim Rule.[2] The conditions that justified the prior extension of the bid cap have not changed. For the reasons stated below, the MPUC supports the ISO's extension of the bid caps.

A. The July 26, 2000 Order

In *NSTAR Services Co*, the Commission ordered the implementation of a $1000 bid cap during OP4 conditions. *NSTAR Services Co.*, 92 FERC ¶ 61,065 (2000) ("*NSTAR*"). The Commission stated:

> We agree with NSTAR that in capacity constrained periods where OP4 conditions apply, the existing New England market does not operate in a manner consistent with a typical competitive market. In a typical competitive market, a supplier's offer price is constrained by the prices offered by competing suppliers and by the amounts that buyers are willing to pay. Buyers would purchase less as the price increased. Such pricing constraints do not exist in New England at present during OP4 conditions.

[2] The ISO filed this Amended Interim Rule in place of NEPOOL under its emergency rule filing authority. Section 6.17 (e) of the Interim ISO Agreement. The NEPOOL Participants Committee approved the extension of the bid cap by a vote of 68%. However, the decision was appealed to the NEPOOL Review Board, thereby preventing NEPOOL from filing this amended rule at the Commission. ISO Transmittal Letter at 4.

> First, when OP 4 conditions are declared or anticipated in advance of the day-ahead bidding deadline, generators know that virtually all bids will be accepted for either energy or operating reserves. Thus, the bids of generators are not constrained by the bids offered by competing generators, because during OP4 conditions, there is little or no spare generation capacity to compete away the business of generators submitting high bids. New England's existing market rules make it profitable for generators to submit very high bids for a small portion of their capacity. During OP4 conditions, the very high bids must be accepted and set the market clearing price, which would be paid for all of the applicable product (energy or operating reserves) in the ISO's market.

NSTAR, 92 FERC at 61,198. The Commission identified other flaws which contributed to the problem of market power during conditions of limited capacity. These flaws included the lack of demand response capability and the absence of a day-ahead market. The Commission noted that "[u]nder a multi-settlement system, buyer [sic] who are price responsive would have time to react to prices." *Id*. at 61,199. Finally, the Commission noted that "[t]hese conditions are exacerbated by the continuing problems with market design in New England and recent problems of coordination with the New York ISO have created market conditions which require measures to lessen volatility in New England energy market prices, especially during OP4 conditions, while these issues are addressed." *Id.*

The Commission concluded that a $1000 bid cap was reasonable because PJM had a $1000 bid cap in place since its inception and because it was concurrently approving a bid cap of $1000 for NYISO in response to concerns raised by generators that the $1000 bid cap in PJM "does not appear to have discouraged generators from participating in the PJM market *nor from adding capacity to the PJM market*." *Id.* at

61,200. (emphasis added). Further the Commission found that there was a benefit in having a uniform bid cap across the Northeast region:

> Our decision to approve the bid cap at the level of $1000 in the New England energy market is also influenced by our concerns about coordination with neighboring control areas during periods of mutual capacity deficiency or emergencies. Different bid caps in neighboring control areas could create supply problems. A single cap across major trading regions would limit incentives to sell into a higher price region during capacity shortages that affect several regions simultaneously.

Id. The Commission subsequently granted the ISO's motion for clarification relating to the implementation of the bid caps.

On November 1, 2000 the ISO submitted for filing a proposed Special Interim Market Rule to extend the temporary $1000 per MWH bid caps through March 31, 2001. The Commission, in approving the requested extension and responding to concerns raised in protests, reiterated its rationale from its July 26 Order:

> In the July 26 Order, we justified the imposition of temporary bid caps, in part, based on continuing problems in market design but also on the lack of competitiveness during capacity deficient periods characterized by OP4 conditions and the lack of demand responsiveness to price. Importantly, the expectation that an OP4 condition will occur or a declaration of an OP4 condition sends a signal to market participants that all, or almost all, bids may be taken the following day. In such a circumstance, there is no upper limit to the prices bid into the market.
>
> We also disagreed with the contention that a $1000 per MWh bid cap would provide a significant deterrent to new investment, particularly over the next one to two years. *The bid cap provides a limit to arbitrarily high bids, but allows a significant margin for profit above the marginal costs of the most expensive unit existing or planned in New England.* In addition, the bid cap was approved initially, and is being extended now, during a transition period in

> which ISO-NE and market participants are exploring ways to remedy the underlying problems that continue to exist in the ISO-NE markets. Until these remedies are in place, bid caps are necessary.

ISO New England, Inc., 93 FERC ¶ 61,248 (2000) (emphasis added).

B. The Amended Interim Rule

In the current proposal, the ISO explains that "the ISO, NEPOOL and state commissions continue to work together to develop appropriate remedies to the market structure and market design problems requiring temporary bid caps." ISO Transmittal Letter at 4. The ISO states that these efforts include CMS/MSS, reforms to the current reserve markets and the adoption of a load response program for the coming summer.

The ISO explains that the current rule contains one substantive change relating to the determination of the Capacity Margin which in turn determines when the price cap will be implemented.

IV.
COMMENTS

A. The Conditions Warranting the Price Cap Still Exist

The MPUC and VDPS strongly support the ISO's requested extension of the bid caps, because the market design problems initially identified by the Commission still exist. The ISO and NEPOOL have made significant progress in beginning the implementation of CMS/MSS; however, according to the ISO's schedule, the day-ahead market will not be implemented in the first phase of CMS/MSS. Thus, the actual implementation of the day ahead market will not occur in the near future or even within this year[3]. Thus, one of the remedies the Commission found was necessary to address the ability of sellers to exercise market power during periods of tight capacity is still missing.

In addition, the MPUC and VDPS note that the load response programs filed by NEPOOL are an excellent first step towards achieving demand responsiveness. However, these programs are as yet untested. Indeed as of this filing, they have not yet been approved by the Commission. Moreover, these programs will be available only to a small percentage of retail consumers.

Because the flaws identified by the Commission continue to exist in spite of the efforts of the ISO, NEPOOL, and state regulators, consumers are still vulnerable to "arbitrarily high bids" offered at times when there is no choice but to accept the bid. While NEPOOL continues to transition to a fully competitive market, the price cap is crucial for the protection of consumers from arbitrarily high prices[4].

B. The Bid Caps Will Not Curb Investment In New Generation

In the past, opponents of price caps have argued that bid caps will stifle new investment in generation. However, this Commission has repeatedly rejected this argument as it applies to a \$1000 per MWh bid cap. As the Commission recognizes, \$1000 per MWH "allows a significant margin for profit above the marginal costs of the most expensive unit existing or planned in New England." *ISO New England, Inc.*, 93 FERC at 61,823.

[3] To the extent that FERC may be concerned about delays in efforts to correct design flaws in the New England market, the recently announced joint undertaking by ISO New England and PJM Interconnection to create a Standard Market Design represents the priority status being accorded to this task.
[4] It bears mentioning that we are quickly approaching the anniversary of the May 8, 2000 price spike in which a bid of \$6000 per MWh hour set the clearing price for four hours. Consumers should not be subjected to similar price spikes in 2001 when the markets continue to sustain serious market flaws.

A bid cap of $1000 is far above even the recent average New England energy clearing price for January 2001 of $62.57 per MWh as reported on the ISO's website. It is far above the 2000 average New England energy clearing price of $43.18 per MWh. Thus, the cap protects customers only from the most extreme bids such as the $6000 bid that cleared on May 8, 2000 while still providing ample opportunity for profit by energy suppliers. [5]

C. The $1000 per MWh Bid Cap Will Maintain Consistency in the Northeast

One of the Commission's concerns in the *NSTAR* Order was that in a tight capacity situation that affected the entire Northeast region, sellers would have an incentive to sell into the high priced region, unless a uniform bid cap covered the entire region. The PJM continues to have its $1000 bid cap in place. The NYISO recently requested an extension of its current $1000 per MWh bid cap, due to expire on April 30, 2001, until October 31, 2002. *New York Independent System Operator, Inc*, Docket No. ER01-1517 (filed March 12, 2001). In the absence of a bid cap for New England, sellers would have an incentive to sell into New England at higher than $1000 MWh prices, thus causing unreasonably high prices in New England and exacerbating shortages in PJM and New York.

V. CONCLUSION

For the above reasons set forth above, the MPUC respectfully gives notice of its intervention and VDPS moves that it be permitted to intervene in the above-docketed matter. Further, the MPUC and VDPS strongly urge the Commission to approve the

[5] In comparison to the current California price caps, the $1000 bid cap provides a curb on bids that provides little restriction on the market except in the most extreme circumstances.

Amended Interim Rule effective April 1, 2001 as requested by ISO New England in this proceeding.

Respectfully submitted,

MAINE PUBLIC UTILITIES COMMISSION and
THE VERMONT DEPARTMENT OF PUBLIC SERVICE

By:______________________________

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Dated: March 30, 2001

Attorneys for MPUC and VDPS

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 30th day of March, 2001.

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M. Denyse Zosa

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